

1
2
3
4 CYRUS SANAI,
5 Plaintiff,
6 v.
7 LEONDRA KRUGER, et al.,
8 Defendants.

9 Case No. [23-cv-01057-AMO](#)
10
11

**ORDER DISMISSING CASE WITH
PREJUDICE; DENYING PENDING
MOTIONS AS MOOT**

Dkt. Nos. 32, 33, 34

12
13 Currently before the Court are Plaintiff Cyrus Sanai's (1) amended ex parte motion for
14 entry of default judgment, ECF No. 32, (2) ex parte motion for leave to file an overlength motion
15 for default judgment, ECF No. 33, and (3) emergency ex parte motion for temporary restraining
16 order, declaratory judgment, and preliminary injunction, ECF No. 34. For the reasons set forth
17 below, the Court DISMISSES the action WITH PREJUDICE. In light of the dismissal, the Court
18 DENIES all pending motions AS MOOT.

19 **I. BACKGROUND**

20 On March 9, 2023, Mr. Sanai commenced this action for violation of 42 U.S.C. § 1983 and
21 declaratory and injunctive relief against the Justices of the California Supreme Court. ECF No. 1
22 at 2-3. Following the Clerk's entry of default, ECF No. 20, on July 10, 2023, Mr. Sanai filed an
23 amended ex parte motion for entry of default judgment and an ex parte motion for leave to file an
24 overlength motion for default judgment. ECF Nos. 32, 33. On July 11, 2023, Mr. Sanai filed an
25 emergency ex parte motion for temporary restraining order, declaratory judgment, and preliminary
26 injunction. ECF No. 34.

27 //

28 //

1 Mr. Sanai seeks a declaratory judgment that:

2

3

4

5

6

7

8

9

10

11

a. under *Bracy*,^[1] Sanai and anyone similarly situated to him has the right to obtain documentary evidence and conduct depositions and have testify at trial members of the judicial branch regarding bias;

b. the California Supreme Court's holding in *Guerra*,^[2] [] is unconstitutional and that the rulings and actions of a state court tribunal on their own may be used to prove actual bias or bias under the federal standard;

c. the State Bar Court Rules of Procedure are unconstitutional in that they do not provide for constitutionally adequate discovery and rights to call witnesses;

d. the California Supreme Court's authority barring discovery against appellate justices and filing recusal motions is unconstitutional and no further proceedings may be conducted at the appellate level until such rights are acknowledged and codified by rule; and

e. the prosecution of Sanai [by the Office of Chief Trial Counsel] was unconstitutional under *Bracy*.

12 ECF No. 1 at 22-23, 24, 26-28.

13 Mr. Sanai also seeks a temporary restraining order, preliminary injunction, and permanent injunction ordering that:

14

15

16

17

18

19

20

21

a. all disciplinary proceedings against Sanai are enjoined;^[3]

b. the trial may only be re-opened in front of a new State Bar Court judge with Sanai entitled to have full discovery and witnesses that would be available in a civil trial, criminal trial, or both;

c. that the California Supreme Court's *Guerra* decision is unconstitutional and that a state court jurist[']s statements and rulings may be entered as proof of bias; and

d. that the California Supreme Court's authority barring discovery against appellate justices and filing recusal motions is unconstitutional and no further proceedings may be conducted at the appellate level until such rights are acknowledged and codified by rule.

22 *Id.* at 23, 25-26.

23

24¹ *Bracy v. Gramely*, 520 U.S. 899 (1997).

25² *People v. Guerra*, 37 Cal. 4th 1067 (2006).

26³ Specifically, Mr. Sanai seeks to enjoin further disciplinary proceedings against him "until the facts necessary to determine the nature and scope of bias under *Bracy* that applies to him and persons not related to Thomas Girardi, his firm, and his colleagues in other firms who continue to enjoy the fruits of his corruption of the State Bar and California Supreme Court." ECF No. 1 at 25.

1 **II. DISCUSSION**

2 *Younger* abstention mandates dismissal of Mr. Sanai's claims, which challenge ongoing
3 state bar disciplinary proceedings as unconstitutional. *See Younger v. Harris*, 401 U.S. 37, 40-41
4 (1971). "Absent 'extraordinary circumstances', abstention in favor of state judicial proceedings is
5 required if the state proceedings (1) are ongoing, (2) implicate important state interests, and
6 (3) provide the plaintiff an adequate opportunity to litigate federal claims." *Hirsh v. Justices of the*
7 *Supreme Court of the State of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995) (citing *Middlesex Cty. Ethics*
8 *Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).

9 Each element is met here. The state bar disciplinary proceedings pending at the time Mr.
10 Sanai commenced this action, *see* ECF No. 1 at 17, satisfy the first element. *See Hirsh*, 67 F.3d at
11 712 (applying *Younger* abstention where appellants faced ongoing disciplinary proceedings at the
12 time of filing suit in federal court). The second element is satisfied because "California's attorney
13 disciplinary proceedings implicate important state interests." *See id.* at 712-13 (citing *Middlesex*,
14 457 U.S. at 434). The third element is likewise met: "the California Supreme Court's rules
15 relating to Bar Court decisions provide for an adequate opportunity for a plaintiff to present
16 federal constitutional claims." *See Robertson v. Honn*, No. 17-CV-01724-JD, 2018 WL 2010988,
17 at *2 (N.D. Cal. Apr. 30, 2018), *aff'd*, 781 F. App'x 640 (9th Cir. 2019), *cert. denied*, 141 S. Ct.
18 948 (2020). "Refusing to abstain would require presuming that the California Supreme Court will
19 not adequately safeguard federal constitutional rights, a presumption the U.S. Supreme Court
20 rejected in *Middlesex*." *Hirsh*, 67 F.3d at 713 (citing *Middlesex*, 457 U.S. at 431).

21 Though there are exceptions to *Younger* abstention, they do not compel a different result
22 here. "If state proceedings are conducted in bad faith or to harass the litigant, or other
23 extraordinary circumstances exist, the district court may exercise jurisdiction even when the
24 criteria for *Younger* abstention are met." *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 621 (9th
25 Cir. 2003) (citations omitted). In an unsuccessful attempt to invoke the bias exception, Mr. Sanai
26 alleges:

27 Sanai has a due process right to an impartial tribunal in the actual
28 constitutional sense, and, under *Bracy*, the right to obtain
information relevant to that issue. The State Bar Court and the

1 California Supreme Court have denied Sanai the right to obtain such
2 information as to both the State Bar Court and the California
3 Supreme Court. This denial violates Sanai's right to due process.
4 Because this is an issue that relates to question of whether the
5 California Supreme Court is biased in the constitutional sense,
6 *Younger* abstention does not apply. *Gibson v. Berryhill* (1973) 411
7 U.S. 564. Perhaps more important, there is no *Younger* abstention
8 because the defendants have explicitly contended, and the state
9 courts have ruled, that Sanai has no right to obtain evidence
10 necessary to show constitutional bias under *Bracy*. See *Middlesex*
11 *County Ethics Comm. v. Garden State Bar Assn* (1982) 457 U.S.
12 423, 432 (1982) [sic]. There are no state court procedures available
13 to Sanai to vindicate his constitutional arguments, because he is not
14 allowed the evidence in his file or to obtain discovery against the
15 judicial branch.

16 ECF No. 1 at 20-21.

17 To make a showing of bias, Mr. Sanai "must overcome a presumption of honesty and
18 integrity in those serving as adjudicators," with "evidence." *Hirsh*, 67 F.3d at 713-14 (citations
19 and internal quotations omitted). Mr. Sanai has proffered only mere conjecture, not evidence, of
20 alleged bias. This falls short of the required showing. *See Robertson*, 2018 WL 2010988, at *2.
21 Mr. Sanai's complaint that there is no procedural mechanism to seek recusal of presiding justices,
22 *see* ECF No. 1 at 21, does not relieve him of his burden of proof. "The absence of a mandatory
23 statutory recusal mechanism applicable to justices of the California Supreme Court does not make
24 a showing of bias unnecessary." *See Hirsh*, 67 F.3d at 714.

25 Mr. Sanai's allegations that *Younger* abstention doesn't apply because "these
26 proceedings follow a pattern of bad faith harassment," *see* ECF No. 1 at 21, fare no better. "In the
27 *Younger* abstention context, bad faith 'generally means that a prosecution has been brought
28 without a reasonable expectation of obtaining a valid conviction.'" *Baffert*, 332 F.3d at 621
 (quoting *Kugler v. Helfant*, 421 U.S. 117, 126 n.6 (1975)). Mr. Sanai's state bar attorney profile
 shows that he is ineligible to practice law. The docket from the review of that disciplinary action
 by the California Supreme Court, *Sanai on Discipline*, No. S276140, shows that the matter has
 culminated in revocation of Mr. Sanai's eligibility to practice law in California.⁴ Those
 proceedings "provide[] attorneys subject to discipline with more than constitutionally sufficient

29
30 ⁴ Pursuant to Fed. R. Evid. 201(c)(1), the Court takes judicial notice of Mr. Sanai's state bar online
31 attorney profile and the docket in S276140.

1 procedural due process.” *Rosenthal v. Justices. of the Supreme Court of Cal.*, 910 F.2d 561, 565
2 (9th Cir. 1990). Against this backdrop, Mr. Sanai has proffered nothing but mere speculation and
3 conclusions in support of his claims of bad faith. This is not enough.

4 Finding no exception to *Younger* abstention, the Court must dismiss this action. *See*
5 *Everett v. Justices of Cal. Supreme Court*, No. 20-cv-03504-EMC, 2020 WL 7389420, at *2 (N.D.
6 Cal. July 7, 2020), *appeal dismissed as frivolous*, 2021 WL 6424652 (9th Cir. 2021), *cert. denied*
7 142 S. Ct. 1238 (2022). Because further amendment would be futile, the dismissal is with
8 prejudice. *See Fahy v. Justices of Supreme Court of Cal.*, No. C 08-02496 CW, 2008 WL
9 4615476, at *5 (N.D. Cal. Oct. 17, 2008) (dismissing action with prejudice where “an amendment
10 to the current complaint to allege a general constitutional challenge to the disciplinary and IOLTA
11 regulations of the State Bar would be futile”).

12 **IV. CONCLUSION**

13 For the reasons set forth above, the Court DISMISSES this case WITH PREJUDICE. All
14 pending motions are DENIED AS MOOT. The Clerk shall enter Judgment against Plaintiff and
15 close the file.

16 **IT IS SO ORDERED.**

17 Dated: July 31, 2023

18
19
20 
21

22 ARACELI MARTÍNEZ-OLGUÍN
23 United States District Judge
24
25
26
27
28